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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1992

Addendum

CROATIA

[27 December 1995]

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I. GENERAL INFORMATION

A. Introduction

1. The Republic of Croatia achieved its independence in 1991, and received full international recognition at the beginning of 1992. It was created as a sovereign State in accordance with the decision of its people expressed on a referendum. It was confirmed by the decision of its first democratically elected Parliament to suspend and break off legal bonds with other republics which had constituted the Yugoslav federation. In implementation of this nation's decision, the Parliament adopted the following decisions of constitutional importance on 25 June 1991: the Constitutional Decision on Sovereignty and Independence of the Republic of Croatia; the Declaration on the Establishment of the Sovereign and Independent Republic of Croatia; and the Charter on the Rights of Serbs and Other Nationalities in the Republic of Croatia. After the accepted period of a "moratorium" on further decisions regarding independence requested by European Community mediators had expired, during the Serbian aggression against Croatia these decisions were confirmed by the Parliament on 8 October 1991.

2. For further data on the general political structure and creation of the independent Republic of Croatia, see the core document of the Republic of Croatia (HRI/CORE/1/Add.32).

3. In assessing the status of human rights protection in Croatia, it is important to bear in mind the fact that Croatia has been the victim of brutal Serbian aggression since 1991. The war in Croatia from mid-1991 has resulted in the violation of guaranteed freedoms and human rights for many Croatian citizens. The Serb-occupied Croatian territories were placed under the control of UNPROFOR (United Nations Protection Force) by Security Council resolution 743 (1992), and after the termination of the UNPROFOR mandate under the control of UNCRO (United Nations Confidence Restoration Operation) in accordance with Security Council resolution 981 (1995). The occupied territories of the Republic of Croatia have been subjected to "ethnic cleansing" of their non-Serbian inhabitants. Militant Serb leaders refused to cooperate and proclaimed a "Serbian State" on the territory under their control. The "ethnic cleansing" in Croatia (by means of mass murders, torture, threats of killing, demolition of houses, seizure of property) began in the regions of Eastern Slavonia, Bania, Kordun, Knin, Obrovac, Drniš and Benkovac in the summer of 1991. More than 250,000 citizens were displaced and forced to flee. According to the available data, there were 195,255 displaced persons (persons who have been banished from their homes but who are still within the borders of their own country) while 59,949 Croatian citizens are located in Austria, Germany, Slovenia, Hungary, Switzerland, Italy and other countries.

4. Human rights were systematically violated and treated with contempt on the occupied territories of Croatia. According to the official records of the Division for Information and Research of the Ministry of Health of the Republic of Croatia (dated 12 January 1994) there were 26,443 wounded and 8,968 killed citizens of Croatia from the beginning of the aggression against Croatia. Among these casualties, there were 7,491 wounded and 2,347 killed civilians, while the rest of the casualties were the members of Croatian

defence forces. These data show an unusually high portion of civilian casualties in the total number of casualties (one third of all wounded and killed). At least 1,000 Croatian civilians (mostly elderly people over 60) were massacred, executed or brutally murdered by the Serbian armed forces in a number of villages in the occupied territories of Croatia. As a consequence of numerous executions and arbitrary mass killings of civilians and POWs (prisoners of war) committed by the Yugoslav Army and Serbian militia, there are a number of mass graves within the occupied parts of Croatia (former UNPA East, West, North and South): Ovčara (295 victims); five localities within the town of Vukovar ("Sloga" stadium 120 victims, 360 victims near the shop "Kiwi", New Vukovar Cemetery 1,200 victims, Old Brickyard building at Sajmište 250 victims, Gelesova dol near Petrova Gora 70 victims); Lovas (140 victims); Tovarnik (four mass graves containing about 250 victims); Jakobovac (300 victims); Petrovci (16 victims); Berak (32 victims); Ernestinovo (several mass graves); Tordinci (208 victims); Dalj (300 victims); Bogdanovci-Vukovar line (over 300 persons disappeared). The exact number of mass graves and victims of executions is still unknown. Furthermore, according to the official data there are 7,800 missing persons in Croatia (2,642 missing persons or persons taken away by force from the town of Vukovar alone). By 2 December 1993 the Division for Information and Research of the Ministry of Health had recorded 6,535 persons released from Serbian concentration camps and prisons on the basis of exchange (3,766 of them were residents of the town of Vukovar).

5. According to the results of comprehensive medical examinations, about 90 per cent of all detained persons were maltreated and tortured; extensive medical documentation on the victims of torture in detention has been collected. Croatian medical institutions have the complete documentation on 40 cases of sexual abuse as well as incomplete documentation on an additional 120 cases of sexual abuse. By 5 November 1993, the Office for War Victims recorded 16,360 disabled veterans, among them 5,000 having serious body injuries, classified in accordance with the WHO criteria.

6. War and its consequences have caused an increase in criminal acts and atrocities also in the areas under the control of the Croatian Government. The human rights violations took place particularly in the areas adjacent to the occupied territories as a reaction to the aggression and atrocities committed by the Serbian paramilitary forces and the Yugoslav Army. The state of security in the country was unstable. The number of 383,039 displaced persons and refugees contributes to the instability of the country. The Government of the Republic of Croatia has done its utmost in order to prevent criminal acts on the territory under its control, and to respond to the violations of the law irrespective of who the perpetrators are. The allegations of human rights violations are promptly checked by the Croatian authorities and after their verification criminal proceedings are initiated against persons under suspicion of committing the crimes.

7. Regarding the recent military and police actions for liberation of previously occupied areas of the Republic of Croatia, we must stress that Croatia was forced to liberate those areas by its military and police forces after a few years of unsuccessful peace initiatives and peace-talks. The leadership of the Republic of Croatia and national institutions have taken all measures to give the Serbian population, except those who had committed war

crimes, guarantees so that they may remain in Croatia. During the military and police action for liberation of the occupied areas, all the international conventions on protection of civilians were complied with, as far as possible under the circumstances of war, especially after the surrender of a part of the Serbian paramilitary forces and their organized departure together with the Serbian population that did not want to stay in Croatia.

8. Immediately after the liberation and even later, a certain number of cases of criminal behaviour were recorded (burning down and looting of deserted houses, robberies and even murders), but the police have taken all necessary measures to find the offenders. In all the cases in which the offenders were identified, and after a criminal report, the police have taken them to the competent judicial bodies so that the appropriate measures for their punishment could be taken. The President of the Republic of Croatia, the Croatian Government and other national institutions, as well as the highest officials of the Catholic Church, have reacted in public a few times, condemning all the criminal acts committed in the liberated areas, and calling for the punishment of those responsible. In those reactions, all the unfounded accusations that the highest State officials had been behind the criminal behaviour were rejected. The response of the Croatian authorities to these problems is described in paragraphs 58-61 *infra*.

B. Constitutional and legal framework

9. The Constitution of the Republic of Croatia was proclaimed on 22 December 1990. The basic framework of the Government relies on the principle of distribution of power (art. 4). Each law should be in compliance with the Constitution, while all other legal acts and regulations should comply both with the Constitution and with the laws of the Republic of Croatia. The governing principle is that human rights and freedoms may be restricted only by law in order to secure protection of the freedoms and rights of other people and of the public order, morality and health (art. 16 of the Constitution). Even in the case of war or immediate danger for the independence and unity of the Republic of Croatia, or in the event of some natural disaster, possible restrictions must not cause inequality of persons due to race, colour, sex, language, religion, national or social origin (art. 17). Although Croatia has been forced to defend its newly established democracy against the aggressors' intent on wild devastation without refraining from unprecedented atrocities, the Republic of Croatia has not officially proclaimed a state of war or emergency (see exceptions at para. 11 *infra*) in order to prevent any restriction of human rights and fundamental freedoms.

10. The main principles that are governing the fundamental freedoms and human rights in the Republic of Croatia are proclaimed and guaranteed by the Constitution. A substantial part (arts. 14-70) of the Croatian Constitution is devoted to the regulation of the fundamental freedoms and human rights of every individual and proclaims the fundamental principles concerning the rights of national and ethnic communities or minorities. The Constitution of the Republic of Croatia guarantees the following fundamental freedoms and human rights: the right to life (the Constitution abolished capital punishment); the right not to be subjected to torture or to inhuman or

degrading treatment or punishment; the right not to be held in slavery or to be required to perform forced or compulsory labour; the right to liberty and security of person; the right to a fair and public hearing; the right to privacy, family life, home and correspondence, to marry and found a family and to equality of spouses; the equal right of men and women to enjoy all civil, political, economic, social and cultural rights; the right to freedom of expression and information (censorship is forbidden); the right to freedom of peaceful assembly and to freedom of association, including the right to form and join trade unions; the right to work and to have free choice of employment; the right to equal wages for the same work; the right to an effective remedy by the competent tribunal for acts violating the fundamental rights guaranteed to the individuals by the Constitution or by the law; the right to the universal and equal suffrage and the right to peaceful enjoyment of possessions; the right to inheritance; the right to education and cultural rights. Those freedoms and rights may be restricted only by an act of Parliament (art. 16) or in a state of emergency; the restrictions may be imposed by the qualified parliamentary majority or by a presidential decree (art. 17/1, 2). But the right to life, prohibition of torture, the principle *nullum crimen, nulla poena sine lege praevia* and the freedom of thought, conscience and religion cannot ever be derogated from.

11. During the war 1991-1992 there were several presidential decrees which temporarily restricted some fundamental rights and freedoms. Six of them lasted for a short time, from the end of 1991 until the end of 1992 when they were abolished; among them was a decree allowing the police to hold suspects in detention for an unlimited period of time. Currently there are two decrees still in force, which temporarily limit application of some provisions of the Criminal Procedure Act (*Uredba o primjeni ZKP u slučaju ratnog stanja ili neposredne ratne ugroženosti neovisnosti i jedinstvenosti Republike Hrvatske, Narodne novine* (*N.n.*) 73/1991, 25/1992) and which regulate some organizational aspects of the judiciary in state of emergency (*Uredba o organizaciji, radu i djelokrugu sudbene vlasti u slučaju ratnog stanja, N.n.* 67/1991, 25/1992).

C. International conventions and treaties

12. International conventions and treaties, when ratified in accordance with the Constitution and published in the official gazette (*Narodne novine* (*N.n.*), art. 90 of the Constitution), are the part of the Republic's internal legal order and have precedence over internal legislation (art. 134 of the Constitution).

13. Based on the Constitutional Decision on Sovereignty of the Republic of Croatia of 1991, the Republic of Croatia, as one of the successors to the former Socialist Federal Republic of Yugoslavia (SFRY), considers itself bound by all international treaties to which SFRY was a party, and which are in accordance with its Constitution and legal system. In accordance with paragraph III of the Constitutional Decision on Sovereignty, and with the decision of the Croatian Parliament of 8 October 1991, by which the Republic of Croatia cut its constitutional connections with the SFRY, the Government of the Republic of Croatia notified the depositaries of succession of the following international instruments on human rights: (a) International Covenant on Civil and Political Rights and International Covenant on Economic,

Social and Cultural Rights; (b) Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; (c) International Convention on the Elimination of All Forms of Racial Discrimination; (d) International Convention on the Suppression and Punishment of the Crime of Apartheid; (e) Convention on the Elimination of All Forms of Discrimination Against Women; (f) Convention on the Prevention and Punishment of the Crime of Genocide; (g) Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity; (h) Convention on the Rights of the Child; (i) Convention on the Political Rights of Women; (j) Slavery Convention and Protocol amending the Slavery Convention; (k) Supplementary Convention on the Abolition on Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; (l) Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others; (m) Convention relating to the Status of Stateless Persons; (n) Convention relating to the Status of Refugees and Protocol relating to the Status of Refugees. The depositaries confirmed the reception and succession of the Republic of Croatia, so the succession to the aforementioned instruments came into force on 8 October 1991. The Republic of Croatia has not made any reservations to these instruments, with the exception of the Convention on the Rights of the Child (art. 1, para. 9).

D. Incrimination of torture

14. Although torture or its other guises, i.e. assault, inflicting grievous bodily injuries, has not been defined separately as an explicit criminal act, it is prohibited by the provisions of the Penal Code (*Krivični zakon Republike Hrvatske, pročišćeni tekst od 22. ožujka 1993, Narodne novine 32/1993*) as criminal acts against human and civil freedoms and rights (arts. 45-65), criminal acts against life and body (arts. 34-44) and criminal acts against the dignity of the person and morality (arts. 79-87). Among them, criminal acts such as infringement of the equality of citizens are of special interest (art. 45), illegal imprisonment (art. 46), extraction of statements by force (art. 48), maltreatment by misuse of position or powers (art. 49), infringing the inviolability of the home (art. 52), illegal search (art. 53), impairing the secrecy of letters and other consignments (art. 54), unauthorized wire-tapping (art. 57).

15. The constitutional requirement that any arrested and convicted person must be treated in a humane way and with respect for his dignity (art. 25/1 of the Constitution) has been supported by many statutory regulations in the laws on criminal and administrative procedure. The Act on the Execution of Penal Sanctions as well as the prison regulations require the same.

16. The Republic of Croatia is one of the few States that have rules on the admissibility of evidence enshrined in its constitutional law. Article 29/3 of the Constitution states that "illegally obtained evidence shall not be admitted in court proceedings". According to this principle, the Criminal Procedure Act not only prohibits certain practices which involve coercion in obtaining statements (arts. 9, 208/8, 209/1, 218, 249/3), but also prohibits such statements as evidence (arts. 208/10, 218) and also provides for invalidity of judgements based on such evidence (art. 354/1 al. 8).

E. Competent authorities

17. The authorities involved in deciding on matters falling under the Convention against Torture are the courts, public prosecutors (i.e. "State attorneys" - "*državni odvjetnici*"), police and other administrative bodies. The courts have a constitutional (art. 115/3) duty to ensure that the law is enforced equally for all (art. 26). In criminal proceedings the public prosecutor does not play only the role of a party, but according to the prevailing continental law doctrine, also the role of an objective State organ committed to the "establishing of truth" and ensuring general compliance with the law. His decisions on prosecution are based on the so-called principle of mandatory prosecution (art. 17 of the Criminal Procedure Act). These obligations also fall upon the police organs, which are responsible for protecting public security and the legal order (the health and lives of the citizens, their property, detecting offences and their perpetrators, providing evidence for the purpose of criminal proceedings, etc.). Their duties and competence are regulated by the Internal Affairs Act (*Zakon o unutarnjim poslovima", pročišćeni tekst od* 27. 5. 1991 (*N.n.* 29/1991; 73/1992; 33/1992) which also delegates power for certain matters to administrative decrees. Within the hierarchical supervision of the Ministry of the Interior, there is a disciplinary court for disciplinary offences of police officers. Upon a citizen's complaint involving allegations of illegal violations of human rights and improper exercise of discretionary power, the disciplinary court of the first instance must institute proceedings and after the oral, and in principle public, hearing may impose a sanction (a fine or dismissal from duty); the complainant must be duly informed of the steps taken upon his complaint. According to the official data, the number of the police officers against whom disciplinary proceedings were instituted, was the following:

Year	Number of officers charged with a disciplinary offence	Total number of acquitted officers	Total number of convicted officers	Dismissed from duty	Fined
1991	20	2	18	7	11
1992	44	2	42	21	21
1993	32	*	24	9	15
1991-1993	96	4*	84	37	47

* = 8 persons at that time were *sub judice*.

18. Decisions in matters falling under the Convention against Torture may also be made by the Ombudsman and by the Constitutional Court in cases of constitutional complaints. Article 93, paragraph 1, of the Constitution states that an Ombudsman is the person authorized by the Parliament to protect the constitutional and legal rights of citizens in proceedings conducted by the governmental administration and bodies vested with public power.

F. Courts and punishment

19. According to the Courts Act (*Zakon o sudovima od* 6.1.1994, *N.n.* 3/1994) the criminal jurisdiction is exercised by the courts having general jurisdiction, and by the specialized courts. The courts of general jurisdiction are: (a) communal courts, which process offences for which the maximum provided penalty does not exceed 10 years of imprisonment; (b) district courts (*Županijski sudovi*), competent to process offences punishable with more than 10 years of imprisonment; and (c) the Supreme Court of the Republic of Croatia, which does not have ordinary jurisdiction but decides in cases of appeals of extraordinary legal remedies. The specialized courts are commercial courts, the Administrative Court of the Republic of Croatia and the military courts. The latter are in fact specialized panels of courts of general jurisdiction only and are within the framework of the appellate jurisdiction of the Supreme Court of the Republic of Croatia.

20. Criminal proceedings are only conducted by the court bodies. The purpose of the first, preliminary phase (the judicial investigation, which may be skipped in "open-and-shut" cases only) is to gather evidence and data necessary for the decision whether to prefer charges against a perpetrator of a criminal offence or discontinue proceedings; the second phase is the main trial with the passing of judgement and the third phase is usually procedure on appeal. Even in the phase of judicial investigation both parties have significant procedural rights: the accused has not only the right to silence and to know the charges, but also the right to retain counsel (about which he has to be duly informed), to inspect the file from the moment he has been interrogated by the investigating judge, to move that certain acts of investigation be taken and to attend all investigating acts. In the course of the main trial the parties may present evidence, interrogate witnesses and experts, move that certain documents be read and plead their case freely.

21. The sanctions which the courts exercising criminal jurisdiction can impose differ as regards the offender's status. For adult offenders there are: (a) punishments (imprisonment from 15 days to 15 years; exceptionally: imprisonment of 20 years for the several gravest offences and fines); (b) suspended sentence; (c) judicial admonition; (d) security measures; and (e) confiscation of property benefits. For minors (i.e. persons from 14 to 18 years) the sanctions are: (a) educational measures (reprimand or short committal in a correction home, so-called measures of intensified supervision on the part of the parents, guardian or in a foster home, and institutional measures such as committal to an educational institution or an educational-correction home or a specialized institution for delinquent minors); and (b) juvenile imprisonment.

22. For the last three years the number of persons sentenced to prison in the Republic of Croatia totalled 36,690 persons. The ratio of convicts per 10,000 adult population amounts to 75. During this period there were recorded 80,348 indictments. These include (for crimes against human freedoms and rights see para. 31 below): 40 indictments for crimes against humanity and international law; 9,652 indictments for crimes against life and body; 6,102 indictments for crimes against honour and reputation; 471 indictments

for crimes against the dignity of person and morality; 12,022 indictments for crimes against property; 5,998 indictments for economic crimes; 2,237 indictments for crimes against public safety; 537 indictments for crimes against the administration of justice; 4,021 indictments for crimes against public order and legal transactions; 3,255 indictments for crimes in office; 1,578 indictments for crimes against the armed forces. A total number of 241 persons were sentenced to imprisonment ranging from 10 to 15 years; 44 persons were sentenced to the maximum of 20 years' imprisonment; 492 persons were sentenced to imprisonment for a term ranging from 5 to 10 years, and 2,952 persons were sentenced to imprisonment ranging from 1 to 5 years. Finally, 32,886 persons were sentenced to imprisonment of one year. As regards penalties imposed on minors, the sentences of juvenile imprisonment were pronounced in 31 cases and educational measures applied in 2,793 cases.

23. The above-mentioned data indicate that serious crimes accounted for approximately 1.06 per cent, crimes for 9.4 per cent, and less serious or minor crimes for 89.6 per cent of the total number of crimes whose perpetrators were sentenced by Croatian courts in the period 1991-1993.

24. The execution of penal sanctions against adult offenders and minors in the Republic of Croatia is regulated by the 1974 Act on the Execution of Penal Sanctions (*Narodne novine*, No. 21/1974, 55/1988, 19/1990, 26/1993, 66/1993). Penal sanctions are executed in 6 main penal institutions, 14 district court jails and 2 specialized institutions for "re-education of juveniles". Regarding their security levels, sex of the prisoners and the duration as well as the main purpose of a prison sentence, the penal institutions in the Republic of Croatia may be divided into several groups: there is one penitentiary of the closed type (located in Lepoglava); one penitentiary for female offenders, of combined type (with closed, semi-open and open units, located in Požega); one institution of semi-open type for adult male offenders (located in Turopolje) and two institutions of open type for adult male offenders (located in Lipovica and Valtura). There is a special hospital for prisoners located in Zagreb, used by prisoners from all the penal institutions. Unfortunately, the correction home for juveniles located in Glina (about 60 kilometres from Zagreb) was occupied for a long time (from the summer of 1991 and the beginning of the aggression against the Republic of Croatia) and has been unavailable for correctional purposes until recently.

25. Persons sentenced to imprisonment for more than five years are sent to the closed-type institutions. The same applies to persons who do not comply with the penal, legal and professionally established criteria (social, psychological and medical) for staying in the semi-open or open institutions. Persons sentenced to imprisonment up to five years are sent to the semi-open and open-type institutions, provided that they comply with the mentioned criteria and seem to be fit for the institutions where the rules are based on self-discipline and personal awareness of responsibility. The defendants who are in custody during the criminal proceedings are kept in 14 district court jails, located near the district courts. The separated units of those jails, some of which have recently been renovated and their living conditions significantly improved, are also used for short prison sentences (up to six months).

26. All penal institutions in the Republic of Croatia can accommodate 2,300 persons: 42 per cent of this capacity is of the closed type and 48 per cent of semi-open and open type. Ten per cent of the capacity is the mentioned special central hospital for the prisoners. The jails can accommodate 1,400 persons. The juvenile homes can accept 230 persons. There were 1,600 convicts (47 of them female prisoners) on 31 December 1993; 653 persons were detained in the district court jails and 135 male or female juvenile offenders were kept in correction homes. In total there were 2,388 imprisoned persons, which is 64.5 per cent of the total capacity of the institutions.

27. Most of the closed-type facilities were built at the end of the nineteenth or at the beginning of the twentieth century. Therefore, the accommodation and sanitary conditions are sometimes below the standards prescribed by the European prison regulations, but are, nevertheless, in most cases compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners. Shortly after the first free elections in the Republic of Croatia in 1991, two of the closed institutions were closed down (an institution for recidivists and an institution for young adults) because of their unpopularity and bad living conditions (the old regime used them mainly for political offenders).

28. Three new prisons were built and four district court jails were completely renovated during the past 10 years. Adaptation of two other jails is currently being carried out, despite limited financial resources. The Government has plans for the reconstruction of the oldest and largest penitentiary in Lepoglava, but expects assistance from the United Nations Crime Prevention and Criminal Justice Branch in Vienna, the institution that is responsible for assistance and support in the equipping and building of penitentiary institutions in the United Nations Member States. This is particularly important because the main problems in penitentiaries are connected with the security and accommodation of the prisoners (see the results of the recent medical inspection in Lepoglava, cited *infra* paras. 100-101). Solving these problems requires a lot of financial resources, which is too heavy a burden for the Republic of Croatia which is exhausted by the war-inflicted damages and which also must support a large number of displaced persons and refugees.

G. Remedies

29. The principal remedies available to individuals who claim to have been the victims of acts of torture or other cruel, inhuman or degrading treatments or punishments are: (a) the right to denounce such incidents before the administrative authorities that are in charge of disciplinary supervision (Ministry of the Interior for acts undertaken in the course of police inquiries; prison wardens and Ministry of Justice for acts undertaken while executing the punishment of imprisonment); (b) the right to complain directly to the State Attorney's office within three days after an illegal or improper police investigative act took place; (c) the right to submit a crime report on particular criminal offences (see para. 16 above) to the State Attorney and, if the State Attorney dismisses it, the right of the victim (so-called

"injured party" in criminal procedure) to institute criminal proceedings against the alleged perpetrator alone, as the subsidiary prosecutor; (d) the right to collect damages either in the course of criminal proceedings (by a motion asserting an indemnity claim) or by way of civil proceedings. For illegal or improper acts of other administrative agencies there is also a habeas corpus-like remedy, instituted in the Administrative Litigation Act, but it has not been widely used in practice.

30. Unlawfully arrested and detained persons as well as unjustifiably convicted persons have the right to compensation for financial and consequential losses they have suffered during the detention and/or conviction. Prior to instituting civil proceedings, they have to file their claim at the Ministry of Justice for a possible agreed settlement concerning the existence of the loss and the extent and type of compensation; if such a settlement is not effected or if the Ministry fails to deliver a formal decision regarding the victim within the period of one month from the receipt of the claim, the claimant is entitled to make a request for compensation to the court.

H. Actual situation and problems

31. As a result of the aggression and the occupation of approximately 27 per cent of the territory of the Republic of Croatia by the Serb armed forces, the Government of the Republic of Croatia was prevented from exercising its authority and guaranteeing the human rights in the occupied areas for more than four years. According to the official data, from UNPROFOR's arrival to the so-called "protected areas" in April 1992 until the end of 1993, there were 12,468 persons forcibly expelled (accompanied by United Nations authorities!) to the free parts of the Republic; there were also 600 murders of civilians, 26 registered rapes and 1,617 cases of maltreatment, wounding, torture and other inhuman treatment of persons of non-Serbian origin. Therefore, the information in this report regards only those persons under the effective jurisdiction of the Republic of Croatia.

32. Apart from grave problems of maintaining public order in the places adjacent to the war zones, until the Republic of Croatia acceded to the Convention against Torture there were some cases of unjustified arrests, beatings and wounding of citizens by police officials and the military security forces on the territory under governmental control. This can be shown by the numbers of persons charged with and convicted of criminal offences against human freedoms and rights:

Type of offence	1991		1992		1993	
	Charged	Convicted	Charged	Convicted	Charged	Convicted
Infringement of the equality of citizens	6	-	2	1	1	1
Force	9	3	7	-	8	-
Illegal imprisonment	5	2	13	6	-	-
Extraction of statement by force	2	2	3	3	5	2
Maltreatment by misuse of position or power	54	11	30	14	37	13
Infringing the inviolability of a home	82	16	71	5	59	7
Illegal search	1	-	-	-	3	-
Impairing the secrecy of letters	8	-	9	1	3	1
Illegal wire-tapping	-	-	-	-	2	-
Total	167	34	135	30	118	24
Total offences against the rights and freedoms of man	1 295	352	706	178	719	185

II. INFORMATION RELATING TO THE SUBSTANTIVE PROVISIONS OF THE CONVENTION

A. Article 2

33. Although the law gives no definition of the torture in the sense of article 1 of the Convention, the Croatian legal system and the rules relating to the police, administration of justice and the penitentiary system lay down the conditions for prevention and punishment of all acts falling within the

meaning of the term "torture" in this Convention. Prohibition of such acts, beside the constitutional norms (art. 23), can be found in various provisions of the Penal Code, Criminal Procedure Code, acts and by-laws regulating the disciplinary liability of the police officers and regulations for the execution of penal sanctions.

34. As mentioned before (see para. 10 *supra*), the constitutional prohibition of torture in the Republic of Croatia cannot be derogated from even under exceptional circumstances (art. 17, para. 3).

35. The legal definitions of the penal charge are given below, (para. 75). Based on the constitutionally enshrined exclusionary rule (art. 29/3 of the Constitution), the Criminal Procedure Act prohibits all kinds of oppressive methods in obtaining the statements of persons in criminal process, imposes the duty of the judge to extract written protocols of such statements from the dossier and provides for the invalidity of judgements based on such evidence. The 1991 Internal Affairs Act (*Narodne novine* 29/1991) and its by-laws provide for the supervisory measures in the police forces as well as for disciplinary procedure and sanctions.

36. When the Constitution of the Republic of Croatia was adopted as the Constitution of a free, independent and democratic country, it represented the foundation (as it represents today) of not only legal but also institutional values for the harmonization of the whole Croatian legal system with the European legislation, particularly with the acts and standards of modern European society. The values and the institutions of American and European democracy, mainly expressed in the principles respecting human rights and personal freedom, have been accepted by doing so. Personal freedom and human and civil rights, as the most important values of the constitutional and legal system, in accordance with article 16 of the Constitution of the Republic of Croatia can be limited only by law, and for the purpose of protection of the freedom and rights of people, the constitutional order, public morality and health. The constitutional order rests on, among other things, court judgements as well as decisions of the public authorities. The effectiveness of the rule of law can be seen in the manner in which these judgements and decisions are carried out. In the execution of these judgements and decisions, the courts and other competent authorities can request help from the Ministry of the Interior. The Ministry is obliged to assist if there is physical resistance to the execution of the decisions or if such resistance can reasonably be expected, as stated in article 46, paragraph 1 of the Internal Affairs Act. Help is given during the procedure of executing the court decisions and decisions of other competent authorities concerning someone's rights.

37. The officials of the Ministry of the Interior, in performing their everyday official duties, are mindful of the stipulations of the Criminal Procedure Act and the Internal Affairs Act of the Republic of Croatia. This Ministry supervises the lawfulness, professional quality, tactfulness, kindness and correctness of the behaviour of police officers towards the citizens, in an effort to contribute to the protection of human rights. If it is established that a police officer has engaged in illegal activities or has overstepped his authority according to the law, the responsible services of the Ministry of the Interior would effectively and in good time carry out an

investigation and sanction adequately every act that is contrary to Croatian law. Disciplinary measures were taken against 23 police officers for maltreatment of citizens in 1993. Seven of them were fired and 16 were fined. In 1994 one police officer was fired for the same reason and 18 were fined an amount totalling 15 per cent of their wages over a period of 16 months.

Police officers disciplined in 1993 and 1994

1993			1994		
No. of disciplinary prosecutions of policemen	Fired	Fined	No. of disciplinary prosecutions of policemen	Fired	Fined
23	7	16	19	1	18

38. The Convention is breached mostly by younger, inadequately trained and inexperienced police officers; breaches consist mainly of causing bodily injuries, most often during the interview, in order to get a confession.

39. Beside the disciplinary measures, criminal procedures were instituted against police officers if their acts contained elements of a criminal act. The fines were the highest possible.

40. Article 6 of the Internal Affairs Act (*N.n.* 29/1991 and *N.n.* 76/94) establishes that public officials have to protect the lives and dignity of people while carrying out their duties, and that they can apply only the measures established by the law and by which they can perform their job with the least harm for the citizens, legal persons and their rights.

41. The number of cases involving the use of coercion in 1994 (767) was approximately at the same level as in 1993 (779). The number of cases of unjustified use of coercion, however, decreased considerably: there were 26 cases in 1994, a decrease of 53 per cent compared with the previous period (56 cases).

42. It is important to stress that there is a very small number of occasions of the use of firearms, so that there were only 29 cases of unjustified use of firearms in 1994.

43. Besides the above-mentioned, physical strength was used the most often as a means of coercion (625 cases). Rubber truncheons were used in 88 cases, and in 25 cases other instruments of constraint were used.

44. Despite the decrease in the number of cases in which instruments of constraint were used, there are still consequences for the people on whom the instruments of constraint were used because of the complex situations in which the police act. Three persons were killed due to the use of firearms in 1994. In two cases officials of the Ministry of the Interior used firearms in order to protect their lives, and in one case to prevent the escape of a person from the scene where a crime had been committed. A total of 141 persons were slightly injured and 14 were seriously injured.

45. Forty officials were reported for overstepping their authority in the use of instruments of constraint, 11 of them were prosecuted, and disciplinary procedures were instituted against 29 of them.

46. The complaints and the reports of the citizens are an important indicator of the lawfulness of the acts of the officials of the Ministry of the Interior as well as of the confidence of citizens in the competent authorities. The responsible authorities of the Ministry of the Interior respond immediately to these reports, and they inform the citizens of the results of the procedure in good time.

47. The lawfulness of the acts of police officials, is based on the implementation of the measures of control and repression ordered by the immediate superior, the commander of the police station and the police district, as well as on the activity of the Office for Internal Control established at the headquarters of the Ministry of the Interior, which is based on West European examples.

48. During 1994, the citizens filed 1,288 complaints against police officials which was 13.38 per cent more than in the previous year (1,136). After investigation of the complaints, it was established that 78.5 per cent of the reports were not founded (1993 - 75 per cent); 19.87 per cent of complaints were justified (25 per cent), and 21 complaints have not been dealt with yet. We stress that all the aforementioned numbers relate to everyday police activities and that we have not registered any case of torture or of any other cruel, inhuman or humiliating treatment.

49. According to article 16 of the Internal Affairs Act, the supervision of the lawfulness of the work of the Agency for the Protection of the Constitutional Order is carried out by the Committee for Internal Policy and National Security of the House of Representatives of Parliament of the Republic of Croatia. The Committee supervises the lawfulness of the work of the Service for the Protection of the Constitutional Order, especially with regard to the realization of human and civil rights and freedoms, the rights and freedoms of legal persons and public and other bodies established by the Constitution and by the law, and the rights and freedoms established by the rules of international law. The facts and the information brought up at the Committee sessions and in the papers prepared for the sessions are considered to be State secrets. The Committee submits a report on its work to the Parliament (Sabor) of the Republic of Croatia at least once a year.

50. From the guidelines which the Croatian Ministry of the Interior has sent to the police districts it is obvious that the Republic of Croatia facilitates the entry into the State of citizens with "red passports" (persons from the territory of "SRY (Serbia/Montenegro)" and the occupied territories of the Republic of Croatia). Taking into consideration the fact that according to the Act on the changes to the Act on Travel Documents of Croatian Citizens (*N.n.* 64/92) "red passports" ceased to be valid on 8 April 1993, the Ministry of the Interior issued guidelines (2 April 1993) in which it is stated that the holders of "red passports" issued in the Republic of Croatia are allowed to enter the Republic of Croatia, but are not allowed to leave it. When entering or leaving the country the stipulation "cancelled" is perforated in the passport, and the passport is then returned to the holder.

51. In the guidelines dated 14 December 1993 it was established that the holders of the "red passports" with residence in the temporarily occupied territory of the Republic of Croatia or having "red passports" issued in the temporarily occupied territory of the Republic of Croatia can enter the Republic of Croatia without the cancellation of the "red passport", and no stipulations or notes can be written in it. Based on the same guidelines, the holders of a "red passport" issued in Serbia, Montenegro or by diplomatic-consular representative bodies of the former SFRY and having residence in Serbia or Montenegro can enter the Republic of Croatia without a visa if the members of their immediate families are Croatian citizens in the Republic of Croatia.

52. The right to enter is given, regardless of the date of issue of the "red passport", with the issuing of the frontier pass.

53. By the guidelines dated 13 January 1994, entry is allowed to citizens of Bosnia and Herzegovina who come to the Republic of Croatia for business purposes under the entrance conditions of the Act on the Movement and Stay of Foreigners.

54. According to article 158 of the Act on the Execution of Sanctions against Criminal Acts, Economic Offences and Misdemeanours, a sentenced person has the right to submit a complaint to the warden of the jail for any violation of his right or any other irregularity committed against him. The warden is obliged to consider carefully each complaint, take a decision on the complaint in the form of a ruling and submit the decision to the sentenced person. If the sentenced person has filed a written complaint against the decision to the Ministry of Justice, the warden is obliged to submit this complaint, together with the relevant documentation and decision, to the Ministry of Justice. The legal department of the jail has to inform the sentenced person of his/her right to file complaints, of the reasons for which a complaint can be filed and the obligation to comply with the double-instance procedure.

55. The Ministry of Justice received 92 complaints in 1994, 28 in 1993, 13 in 1992 and 152 in 1991. No complaints have been filed against the use of instruments of constraint.

56. According to the legal provisions, the members of the judicial police may use instruments of constraint only if it is necessary to prevent escape, physical attack against the personnel, injuring of another person, self-injuring, or causing material damage by the sentenced person. The use of firearms is allowed if the use of physical force, truncheons or other instruments of constraint cannot secure the performance of duties, protect the lives of people and prevent the sentenced person from attacking and endangering directly the lives of the judicial police officers, attacking the premises or escaping. The Ministry of Justice is informed of each use of firearms against a sentenced person.

57. A disciplinary procedure before the Disciplinary Tribunal was conducted only in one case, against a jailkeeper, in 1992. The Disciplinary Tribunal issued a reprimand.

Use of instruments of restraint in jails in 1991, 1992, 1993 and 1994

Instruments of restraint	1991	1992	1993	1994	Total	Justified	Unjustified
Tying and separation	4	5	17	18	44	44	0
Physical force	8	8	13	16	45	45	0
Truncheons a/	3	10	31	15	59	58	1
Hoses	0	0	0	0	0	0	0
Trained dogs	0	0	0	0	0	0	0
Chemicals	2	2	0	2	6	6	0
Firearms b/	1	0	0	0	1	1	0
Total	18	25	61	51	155	154	1

Notes: The analysis is based on the reports made by the jails.

a/ Mirsad Budimović was punished by the Disciplinary Tribunal for unjustified use of a truncheon.

b/ Firearms have been used as a deterrent, and their use cannot be considered to be an instrument of constraint (shooting in the air to prevent escape).

58. Immediately after the liberation of the occupied territories of the former Sectors North and South, the Croatian authorities started the activities for establishing civilian authorities, especially for personal security and security of the property of the citizens who stayed there, but also of the abandoned property. However, despite all this, there were a few individual cases of violence in the liberated areas, and even a few murders, which objectively could not have been prevented by the police because they were, according to the information, committed by individuals and small groups of persons who were not under the control of the Croatian authorities, mostly for revenge and low criminal motives. According to the data and information collected so far and the investigations that have been carried out, the police have taken the measures within its competence to solve the crimes committed during and after the liberation of the occupied territories.

59. According to the police reports 26 murders, out of which 15 were solved (4 multiple murders and 11 single murders, with a total number of 31 victims) were recorded and investigated. For those offences 20 persons were reported to the competent judicial bodies, while further measures are being taken with regard to 11 investigated murders (16 murdered persons) in order to identify the offenders.

60. There were 2,787 registered fires in the liberated areas, mostly in family houses and farm buildings. There are efforts to establish whether the fires broke out during the war operations or after them. It has been established so far that 2,072 buildings were damaged in the fires caused by war operations, and 715 buildings were partly or completely destroyed

by arson. Crime reports were filed with the competent State Attorney's offices against 11 persons for whom it had been established that they had committed arson after military police action.

61. There were recorded 1,054 criminal offences of aggravated thefts in the same area, which were mostly thefts of objects from abandoned houses. Seven hundred and twenty of those criminal offences were solved by criminal investigation, and 1,260 persons were reported to the competent judicial bodies as perpetrators of those offences.

B. Article 3

62. The Act on the Movement and Residence of Foreigners (*N.n.* 53/91) recognizes refugee status for foreigners who left the country whose citizens they are, or in which they had permanent residence as persons without citizenship, in order to avoid persecution because of their political opinion or for national, racial or religious reasons. Requests for the recognition of refugee status should be filed with the responsible authority immediately after entering the Republic of Croatia. The foreigner is sent to the reception centre for foreigners until the procedure is over if a place to stay and financial means are not provided otherwise.

63. The request for recognition of refugee status contains the name and family name, date and place of birth, citizenship, nationality, profession and the address in the country he left, the circumstances under which he/she came to the Republic of Croatia, information on the members of the close family and their address, the reasons for requesting refugee status, and whether he/she requested the protection of another country (*N.n.* 54/91). The request can be denied if there is a suspicion that the person committed terrorist acts or a serious offence, that he/she acted against the goals and principles of the United Nations or if it is necessary because of reasons of national security or public order. Because of the same reasons refugee status can be revoked if already granted.

64. A child of a foreign national to whom refugee status was given has the same rights as his parent, and after the age of 18 he is considered to be a foreign national on a prolonged stay.

65. The Ministry of the Interior decides on all the above-mentioned, also taking into consideration the opinion of the Ministry of Labour and Social Welfare.

66. Necessary accommodation, means of support and medical care are given to a foreign national with recognized refugee status for a maximum of three months starting from the day refugee status was recognized until his/her departure to another country or until he/she can support himself/herself. This limit does not refer to a foreign national unable to work and to support himself.

67. Refugee status is revoked to the foreign national who requests the protection of the country whose citizen he is, or the country where he is domiciled as a person without citizenship, if the reasons for which he fled

that country no longer exist so that he can return, or if he returns to that country of his free will. Refugee status also ceases if a foreign national gets citizenship of another State (*N.n.* 53/91).

68. In 1994, 10 requests for the recognition of refugee status were dealt with. The number was so small because that issue is now the responsibility of the Government's Office for Displaced Persons and Refugees. In the same year 16,548 measures were taken against foreign nationals; 71 safety measures of expulsion were pronounced, 867 precautionary measures and 488 denials of residence. The Ministry of Foreign Affairs was informed of all the cases in which the foreign nationals were detained, within the time-limit defined by law.

69. Also in 1994, 370 foreign nationals were removed by force from the territory of the Republic of Croatia: 139 of them were the nationals of the so-called Socialist Republic of Yugoslavia (Serbia/Montenegro), 61 nationals of the Republic of Bosnia and Herzegovina, 29 nationals of the former USSR, 33 Romanian nationals, 18 Turkish nationals, 16 Albanian nationals, 10 Slovenian nationals, 23 Lebanese nationals, 2 Algerian nationals, 2 Hungarian nationals, 8 German nationals, 1 British national, 1 Bulgarian national, 1 national of the United States of America, 1 Austrian national, 1 Dutch national, and 1 French national. The problems with the nationals of Bosnia and Herzegovina should be set aside because the Government's Office for Displaced Persons and Refugees dealt with most of them. The cooperation with this Office was satisfying in 1994.

70. According to information from the Ministry of the Interior of the Republic of Croatia, 215 persons moved into Croatia from the republics of the former Yugoslavia (by the exchange of property) in 1994, 1,535 persons came to the free territory from the occupied territories of the country, 30,745 refugees from the Republic of Bosnia and Herzegovina came to the territory of the Republic of Croatia with the consent of the Government's Office for Displaced Persons and Refugees or with the permission of the Ministry of Defence and through UNHCR or other international humanitarian organizations. At the same time, 18,144 refugees from the Republic of Bosnia and Herzegovina left for third countries through international humanitarian organizations.

71. The problem of refugees from the Republic of Bosnia and Herzegovina who have had organized accommodation in UNPAs (United Nations Protected Areas) provided by UNHCR appeared in 1994, after the fall of Velika Kladuša. A lot of them came to the free territory illegally, as had been expected, and 1,149 were sent back, via Turanj.

72. The Ministry of the Interior cooperated successfully with the international humanitarian organizations as well as with the services of the Ministry of Foreign Affairs of the Republic of Croatia, the Ministry of Labour and Social Welfare and the Ministry of Justice during the last year.

73. There are currently three temporary centres for accommodating foreign nationals in the Republic of Croatia: in Dugo Selo, Rijeka and Obonjan (near Šibenik). The centres in Dugo Selo (near Zagreb) and Rijeka are used only for very short-term accommodation of foreign nationals who are in the process of

getting their documents, waiting for the means to be provided and arranging the details before leaving the territory of the Republic of Croatia. Most of the foreign nationals are accommodated in the centre on the island of Obonjan near Šibenik. On this island there is a camp for refugees, which is the responsibility of the Government's Office for Displaced Persons and Refugees, so the treatment of foreigners under police surveillance is almost the same as that of refugees.

74. In addition, and for the purpose of providing better treatment and conditions for the stay of foreign nationals, an Accommodation Centre is expected to open in May 1996. The building is situated in Ježevo, near Zagreb (the building of the former Motel Ježevo) and it is being renovated now.

C. Article 4

75. The 1992 Penal Code of the Republic of Croatia stipulates as criminal a number of acts whose prohibition is primarily oriented to the protection from torture and other inhuman or degrading treatment or punishment. These include infringement of the equality of nationals (art. 45), illegal imprisonment (art. 46), extraction of statements by force (art. 48), maltreatment by misuse of position of public power (art. 49), coercion (art. 51), infringing the inviolability of the home (art. 52), illegal search (art. 53), impairing the secrecy of letters and other consignments (art. 54) and illegal wire-tapping and audio-recording (art. 57). [The texts of these articles are available for consultation in the files of the Secretariat.]

D. Article 5

76. According to paragraph 99 of the Basic Criminal Law of the Republic of Croatia the Croatian criminal law is applied to any person who has committed a criminal offence on the territory of the Republic of Croatia. Croatian criminal law is also applicable to any person who commits a criminal offence aboard a domestic vessel (a vessel registered in the Republic of Croatia), regardless of its whereabouts at the time of committing the offence. Applicability of Croatian criminal law extends as well to offences committed aboard a domestic civil aircraft during the flight, or aboard a military aircraft regardless of its location at the time of committing the deed.

77. According to paragraph 101 of the Basic Criminal Law of the Republic of Croatia, the provisions of Croatian criminal law apply to a national of the Republic of Croatia for acts committed abroad, provided he is found on Croatian territory or was extradited.

78. According to the provisions of paragraph 102 of the Basic Criminal Law of the Republic of Croatia, Croatian criminal law is also applied to a foreign national who has committed a criminal offence against the Republic of Croatia or a Croatian national outside Croatian territory, provided that he is found on the territory of the Republic of Croatia or has been extradited.

79. The Republic of Croatia has accepted the universal principle of the applicability of criminal law. Due to this principle, Croatian criminal law is applied to a foreign national who has committed against another State or its national an offence outside the territory of the Republic of Croatia.

The prerequisites for the establishment of such jurisdiction, according to the universal principle, are the punishability of an offence by imprisonment for more than five years provided by the legislation of the State in question, and non-extradition of the alleged offender by the Republic of Croatia provided he is found on its territory.

80. Regarding the penal incriminations given *supra* (para. 75), the universal principle is applicable to all major offences that could be considered the most dangerous forms of threat to the society and the integrity of an individual.

E. Article 6

81. According to the rules of the Criminal Procedure Act, if there is a well-founded suspicion against a particular person that he has committed a criminal offence, preparatory proceedings (i.e. investigation) may be commenced against him; if conditions exist for his arrest, he may be taken into custody (preliminary detention). This measure may be ordered only on specified grounds, by means of a warrant issued by an investigating judge to whom the arrested person is brought and who interrogates him before issuing the warrant. It must be vacated, even without the defendant's motion, when the grounds necessitating it have disappeared. It must be substituted by a less strict measure (e.g. promise of the defendant not to leave his place of residence; bail) whenever requirements for that are met. At the request of the detained person, his next of kin or any other person designated by him must be notified. During the preparatory proceedings, the defendant may be held in preliminary detention for no more than a month from the day of arrest. After the expiry of this period the panel of the district court may extend the detention for a maximum of two months, and in the cases of serious offences that could be punished by imprisonment of more than five years, the panel of the Supreme Court may prolong the preliminary detention for no more than three months. After that period, the defendant must be released from custody, regardless of whether the preliminary investigation has been completed. Illegally detained persons have the right to compensation for the damage suffered and to reparation from the State budget.

82. As regards the procedure for the extradition of defendants and convicted persons, the Criminal Procedure Law states that after the request for the extradition of a foreign national has been forwarded to the investigating judge of the district court in whose jurisdiction the foreign national resides or was located, and if there are grounds for preliminary detention, the investigating judge must issue a warrant decreeing that the foreign national should be detained, unless it appears from the request that the extradition should not be granted. After establishing the identity of the foreign national, the investigating judge must apprise him without delay of the act he is accused of and the evidence on the ground on which his extradition is sought, and advise him of his right to retain counsel. Counsel must be assigned to him on the court's own authority if a criminal offence is involved in regard to which participation of defence counsel is mandatory.

83. In urgent cases, when there is a danger that the foreign national could flee, the police have the authority upon request of a foreign agency, no matter how communicated, to arrest such foreign person in order to take him

before an investigating judge of the district court. This request must contain the specified data and a statement that extradition will be requested through regular channels.

84. After the preliminary detention has been ordered, the investigating judge must inform the Ministry of Foreign Affairs through the Ministry of Justice. Where the grounds for detention cease to exist or the foreign State has not made a request for extradition within the period set by the judge, the foreign national must be released. This period may not exceed three months from the day of arrest; upon the application of the foreign State, the panel of the district court may for good cause extend such period to a maximum of another two months.

85. The provisions of relevant bilateral consular conventions or the Vienna Convention on Consular Relations (which have been in force in the Republic of Croatia since 1991) were in the course of the proceedings considered in each case involving the preliminary detention of a foreign national.

F. Article 7

86. The principle *aut dedere, aut judicare*, which is embodied in article 7 of the Convention, has also been established in the Croatian legal system. As in most of the Western European States, the courts control the extradition procedure and the application of extradition treaties. But since extradition is considered to be an act of the Government, the Republic of Croatia has adopted the system of the so-called "judicial veto": if the ruling of the district court whereby extradition is refused becomes final, it must be transmitted to the foreign State only, and the case is concluded. If the court rules that statutory or conventional prerequisites for the extradition of a foreign person have been met, such finding must be referred to the Ministry of Justice which finally decides on the admissibility of the extradition. But to the former case the rules on the public prosecutor's duty to prosecute apply (the so-called principle of mandatory prosecution, *see supra*, para. 17); if it transpires from the foreign State's request and submitted materials that there is evidence that an offence which is (under rules described in art. 5, *supra*) subject to public prosecution has been committed abroad, he must initiate criminal proceedings by making a request to start an investigation. This request is submitted to the competent district court. Thus, the Croatian legal system guarantees that the person whose extradition has been refused will be prosecuted and adjudicated in the same manner as all other persons falling within the scope of the territorial validity of the laws.

G. Article 8

87. The following bilateral conventions on extradition are currently in force in the Republic of Croatia:

(a) Convention on the Extradition of Offenders between the Kingdom of Serbs, Croats and Slovenes and Italy, dated 6 April 1922;

(b) Convention on Mutual Legal Aid between FPRY (Federal People's Republic of Yugoslavia) and PR Bulgaria, dated 23 March 1956;

(c) Convention on Mutual Legal Relationships between FPRY and the Kingdom of Greece, dated 18 June 1959;

(d) Convention on Legal Aid in Civil and Penal Matters between Yugoslavia and Poland, dated 6 February 1960;

(e) Convention on Mutual Legal Aid between FPRY and PR Hungary, dated 7 May 1960;

(f) Convention on Regulation of Legal Relationships in Civil, Family and Penal Matters between SFRY and the Republic of Czechoslovakia, dated 20 January 1964;

(g) Convention on Mutual Legal Relationships between SFRY and PR Hungary, dated 7 March 1968;

(h) Convention on the Extradition of Persons between SFRY and FR Germany, dated 26 November 1970;

(i) Convention on the Extradition and Legal Aid in Penal Matters between SFRY and the Kingdom of Belgium, dated 4 June 1971;

(j) Convention on the Extradition of Persons between SFRY and Turkey, dated 17 November 1973;

(k) Convention on Legal Aid in Penal Matters between SFRY and the Republic of Austria, dated 1 February 1982;

(l) Convention on Extradition between SFRY and the Republic of Austria, dated 1 February 1982;

(m) Convention on Legal Aid in Civil and Penal Matters between the Republic of Croatia and the Republic of Macedonia, dated 2 September 1994;

(n) Convention on Legal Aid in Civil and Penal Matters between the Republic of Croatia and the Republic of Slovenia, dated 7 February 1994.

88. The following bilateral conventions on legal aid in penal matters are currently in force in the Republic of Croatia:

(a) Convention on Legal and Judicial Protection of Nationals (annex 41 to the Convention between the Kingdom of Serbs, Croats and Slovenes and Italy), dated 6 April 1922;

(b) Convention on the Extradition of Offenders between the Kingdom of Serbs, Croats and Slovenes and Italy, dated 6 April 1922;

(c) Convention on Legal Aid in Civil and Penal Matters between Yugoslavia and Poland, dated 6 February 1960;

(d) Convention on the Regulation of Legal Relationships in Civil, Family and Penal Matters between SFRY and the Republic of Czechoslovakia, dated 20 January 1964;

(e) Convention on the Extradition and Legal Aid in Penal Matters between SFRY and the Kingdom of Belgium, dated 4 June 1971;

(f) Convention on Legal Aid in Penal Matters between SFRY and FR Germany, dated 1 October 1971;

(g) Convention on Judicial and Legal Aid in Penal Matters between SFRY and the Republic of Turkey, dated 8 October 1973;

(h) Convention on Legal Aid in Penal Matters between SFRY and the Republic of Austria, dated 1 February 1982;

(i) Convention on Mutual Surrender of Convicted Persons for the Implementation of the Sentence to Imprisonment between SFRY and CSSR (Czech-Slovak Socialist Republic), dated 23 May 1989;

(j) Convention on Legal Aid in Civil and Penal Matters between the Republic of Croatia and the Republic of Slovenia, dated 7 February 1994;

(k) Convention on Mutual Implementation of Judicial Decisions in Penal Matters between the Republic of Croatia and the Republic of Slovenia, dated 7 February 1994;

(l) Convention on Legal Aid in Civil and Penal Matters between the Republic of Croatia and the Republic of Macedonia, dated 2 September 1994;

(m) Convention on Mutual Implementation of Judicial Decisions in Penal Matters between the Republic of Croatia and the Republic of Macedonia, dated 2 September 1994.

89. Regarding extradition matters, there are 14 bilateral conventions currently in force in the Republic of Croatia (signed with Austria, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Hungary, Italy, Poland, Slovakia, Slovenia, the former Yugoslav Republic of Macedonia and Turkey). In respect of the mentioned bilateral conventions extradition is in most cases (Austria, Belgium, Bulgaria, the Czech Republic, Germany, Greece, Italy, Poland, Slovakia) possible for the offences given *supra*, article 4, paragraph 75, with the exception of coercion. Concerning the convention with the Republic of Turkey, the possibility of extradition exists only for the offences of illegal imprisonment and the extraction of statements by force. The convention with Hungary provides no possibility of extradition regarding the offences given *supra*, article 4, paragraph 75.

90. It is very important to mention that, besides the extradition based on conventions, the legislation of the Republic of Croatia provides for the possibility of so-called non-contractual extradition which is based on reciprocity and the exclusive application of the national law of the requested country.

H. Article 9

91. Judicial assistance and cooperation in penal matters concerned with the offences covered by the Convention are given pursuant to the bilateral conventions currently in force in the Republic of Croatia, as well as the national rules contained in the Criminal Procedure Act, which provide the possibility but not the obligation of extraconventional cooperation in penal matters. All conventions and the national law provide for foreign countries the range of assistance in penal matters, including: the verification of documents of persons residing abroad or institutions having their headquarters abroad; the hearing of accused persons, witnesses or experts; the searching of premises and persons; the seizure of objects and their delivery abroad; the summoning of persons residing abroad to appear voluntarily before the court with a view to their interrogation as witnesses or in identification procedures as well as the producing of prisoners and of files, documents and information on the police records of accused persons. The courts may grant judicial assistance at the request of courts and other authorities of foreign States, provided that certain limitations on assistance do not exist (the military or political nature of the offence; if the request would jeopardize the security or other essential interests of the Republic of Croatia).

I. Article 10

92. Informing and educating police officials on the prohibition of torture and other cruel, inhuman and degrading treatment of persons who are being interviewed, interrogated or in jail, etc., is being carried out on a regular basis as a part of the course, academy and faculty curricula, that is in all three organized forms of teaching at the Police Academy. This is the way to direct, stimulate and develop civilized, cultural and human relationships between future police officers and citizens.

93. The contents of the Convention are incorporated in a few subjects at various levels of education, so that it is researched as a part of the curriculum in subjects such as methods of police procedures, methodology of crime investigation, subjects related to the Criminal Procedures Act and the Internal Affairs Act, criminology, and in the Police Service Regulations, as well as in a group of legal subjects including elements of penal law and police law.

94. The students studying to become members of the judicial police are also educated in the Police Academy. They analyse in detail the problems of torture in the context of several subjects. Beside the Convention against Torture, they also discuss the contents of other similar conventions.

95. In the curriculum of the university, the Convention against Torture is discussed within the framework of legal subjects including organization and functioning of the police, crime investigation tactics, military skills and protection of the constitutional order.

96. In the education of military policemen, a lot of attention is being paid to the humane approach to treating persons, which must be in accordance with behaviour that does not harm honour, reputation and dignity, as well as the physical integrity of persons against whom the proceedings are being

carried out. The military police officers get the knowledge from the fields of penal law and criminal procedure law and through lessons at the Education Centre of the Military Police, and through practical activities that enable them to communicate with the persons they treat, including prisoners of war. In treatment of prisoners of war by the military police, special attention is being paid to the respecting of international conventions, so that fulfilling of those duties is entrusted exclusively to jurists and criminologists from the military police.

97. The prescribed use of force and means of force in treatment carried out by military police officers is the same as in regulations for the regular police forces of the Republic of Croatia, and is regulated by the Internal Affairs Act (*N.n.* 22/91, revised text).

98. For the purpose of further development of the rule of law, the Ministry of Defence of the Republic of Croatia has, in cooperation with the International Committee of the Red Cross, organized a few seminars dealing with international humanitarian law and the law of war in the school for officers and non-commissioned officers since October 1992. The focus of the seminars was on teaching the duties of decent, humane and correct treatment of prisoners of war, in accordance with the provisions of international instruments, especially the Convention against Torture.

J. Article 11

99. Under article 39 of the State Administration Act, as well as article 88a of the Law on the Execution of Sanctions for Criminal Offences, Business Offences and Violations, the supervision of the health-care services in the penitentiaries of the Republic of Croatia is conducted by the Ministry of Health through its Expert Commission. According to the information from the report of the Expert Commission on the health care performance in the prisons in Lepoglava and Požega (the largest in the Republic of Croatia) dated 25 April 1994, the health services in these prisons are organized through primary health-care units, while the specialized health care is performed in the Prisoners' Hospital in Zagreb.

100. According to the findings of the report, the hygienic conditions in the facilities in Lepoglava were mostly satisfactory. Medical check-ups are regular and the infirmary is rather well supplied with medicines. The quality of food is satisfactory. The Charter on Patients' Rights is fully observed. The main objections refer to the somewhat poorer conditions of the toilets and the inadequate keeping of the records. It should be noted, however, that after the visit and findings of the Commission, comprehensive actions were conducted for the adequate improvement of the toilets and hygienic facilities. Nevertheless, it should be noted that the prison in Lepoglava is surely one of the oldest prisons in Europe. In this respect, the quality of accommodation of the prisoners is a bit worse than the one stipulated by the strict European Prison Rules.

101. The hygienic conditions in the facilities in Požega (penitentiary for women) are satisfactory, and even better than those stipulated by the strict legal provisions.

102. As already mentioned, the Criminal Procedure Act sets the judicial control and fixed time-limits as regards duration of preliminary detention in the course of preparatory proceedings; after the charge-sheet has been preferred, there are no more fixed time-limits for the duration of detention. But the Constitution provides the right of detained persons to be tried "in the shortest possible term" (art. 25, para. 2) and the Criminal Procedure Act (art. 189) provides regular periodical judicial review of the validity of the detention warrant (at 60-day intervals). The detained person has the unlimited right to appeal for preliminary detention to be revoked altogether or substituted by bail.

103. According to some empirical research on the detention rate and average duration, the Republic of Croatia had 24 detainees per 100,000 inhabitants before the war in 1991 (later figures have not been gathered yet). The average duration of preventive detention in the period 1989-1992 at the district court in Zagreb (the largest in the country) was as follows:

	1989 %	1990 %	1991 %	1992 %
up to 1 month	55	65	59	41
1-3 months	24	17	20	24
3-6 months	10	10	12	16
over 6 months	11	11	11	11

The considerably negative trends in 1992 may be ascribed to various causes and should be subjected to comprehensive researches. One of them may be a significant backlog at criminal courts which is a consequence of the war in 1991: according to data from the Ministry of Justice, this backlog of criminal cases increased from 23,202 in 1990 to 26,936 in 1992.

K. Article 12

104. As stated above, the authorities involved in deciding on matters falling under the Convention are the courts, public prosecutors, the police and other administrative bodies. The duty of all these bodies is, inter alia, to obey the constitutionally protected prohibition of torture and other inhuman or degrading treatment or punishment and the principle of human dignity. If it happens in the course of the police inquiries that this general duty has been neglected or violated, the injured person may lodge a complaint to the public prosecutor's office within three days from the date when an alleged violation has taken place (art. 142, para. 4, of the Criminal Procedure Act). When assessing the complaint, the public prosecutor may conclude that there is a well-founded suspicion that a criminal offence against a citizen's rights and freedoms was committed (*supra*, art. 4). In that case, he is bound by the principle of mandatory prosecution and obliged to initiate criminal prosecution. The same applies when a victim of oppressive conduct by public officials files a crime report with the public prosecutor's office. But if the public prosecutor does not institute a prosecution against the reported official, he must notify the injured party of the dismissal of his crime report and of the grounds therefor (art. 144, para. 1, of the Criminal

Procedure Act). This person may then assume the role of the so-called subsidiary prosecutor and prosecute the alleged violator himself. For this purpose, the law provides the subsidiary prosecutor with the same procedural rights as the public prosecutor, including the right to a legal representative appointed by the State in serious cases, if because of his financial position he is unable to bear the costs of the attorney.

L. Article 13

105. In the armed forces of the Republic of Croatia, the Regulations on Military Discipline (*N.n.* 24/92) regulate military discipline, disciplinary measures and disciplinary punishments, the authority and procedures of hearings on breaking military discipline, pronouncing and carrying out of disciplinary measures and punishments, and the authority, structure and activity of military discipline courts.

106. A person serving in the armed forces who breaks military discipline can be liable for a disciplinary mistake (a minor offence) or a disciplinary offence (a serious offence). By article 10 of the Regulations, the following disciplinary measures can be pronounced for a disciplinary mistake: warning, rebuke, prohibition to leave the barracks for up to 7 days, military custody for up to 30 days. The following disciplinary punishments can be pronounced for a disciplinary offence: checking of promotion from 1 to 2 years, reduction in salary of 10 to 20 per cent (for soldiers from the Guard units up to 40 per cent) lasting from 1 to 12 months, custody for up to 30 days, releasing from duty of reserve non-commissioned officers or officers with prohibition of reappointment to that duty lasting from 1 to 3 years, dishonourable discharge from the service (art. 11 of the Regulations).

107. A superior officer is obliged to institute proceedings for a disciplinary mistake immediately, to interrogate the perpetrator and to make written minutes. When the authorized officer determines that by the violation a criminal offence has also been committed, the case is delivered in the regular way to the military prosecutor. Establishing of criminal liability does not exclude disciplinary liability.

108. The officer authorized to pronounce the disciplinary measure makes a written command on that measure in the form of an administrative document. A person against whom a disciplinary measure has been pronounced has the right to appeal, and the decision on the appeal must be reached within three days after it has been received. Disciplinary measures are pronounced in accordance with the Service Regulations of the Armed Forces, set by the President of the Republic, nr. PA 7-47/1-92, dated 20 May 1992.

109. A military disciplinary court of the first degree and a higher military disciplinary court at the main headquarters are competent for trials regarding disciplinary offences. Those courts have tribunals made up of three judges, one of whom is the president. They take a decision in the form of a sentence or ruling. Defendants can have a defence attorney at the hearing. Appeals can be made to the higher military disciplinary court, which delays the execution of the sentence. A convicted person or his superior officer can initiate a procedure to decrease or mitigate the sentence or to obtain a pardon. In practice, an offender goes to the military disciplinary court if

he caused material damage to the armed forces, if he has already been punished for disciplinary offences a few times, if his behaviour caused damage to the reputation of the Croatian Army, or if he committed a criminal offence.

M. Article 14

110. In the Republic of Croatia, any person against whom an effective penal sanction was ruled or who was found guilty and then released from the sentence to the effect that subsequently, as part of an extraordinary legal remedy being resorted to, the new procedure was effectively suspended or the person was effectively acquitted, has the right to claim damages for an unfair court ruling (art. 528 of the Criminal Procedure Act).

111. Pursuant to article 532 of the Criminal Procedure Act, the persons who were kept in custody without any preceding court action taken or who were acquitted by a court decision, or the persons who were serving a prison sentence and whose sentence was reduced as a result of an extraordinary legal remedy being resorted to, or persons who, due to an error committed by the State authorities, were illegally kept in custody or prison for an excessive period of time also have the right to compensation.

112. A person whose impermissible acts led to the deprivation of freedom does not have the right to compensation.

113. To exercise his right to compensation and prior to filing a suit for damages, the claimant must first apply to the Ministry of Justice to agree on the existence of damage caused and the amount of compensation requested. In case of rejection of such a claim or the Ministry's failure to make its decision within three months from the date on which the claim was made, the claimant can file a suit for damages with a competent court. Such a suit is filed against the Republic of Croatia.

114. In case of the claimant's death, his successors have the right to proceed with or to file a suit for damages, provided that the deceased person has not renounced his claim or that the three-year period within which the case must be resolved has not expired.

115. If a case involving an unjustified sentence or an unjustified imprisonment was publicized in the mass media to an extent which damaged a person's reputation, the person also has the right to moral satisfaction by having a denial published in the press or some other media. In case of the person's death this right is succeeded to by his or her spouse, children, parents, brothers or sisters. Such a request should be submitted to the court within six months from the date of acquittal and is not subject to a previous suit for damages.

116. An unfairly sentenced or unfairly imprisoned person who has lost his employment or his social insurance status as a result of such sentence or imprisonment is recognized the right of continuity of employment for the period in which it was interrupted. This also applies to the pension plan.

117. The legal practice in the Republic of Croatia knows of a relatively small number of cases involving erroneous court sentences. An unfair sentence is

mostly determined through a renewed criminal procedure and quite rarely as a result of other extraordinary legal remedies being resorted to. In all cases, however, an unfair sentence is determined from the moment of acquittal from the previous sentence or through a court decision rejecting the indictment.

118. Following the independence of the Republic of Croatia in 1991 and up to the end of 1994, a total of eight such procedures were initiated. In five cases the occurrence of unfair sentences was established and the complaints were wholly accepted. The other three cases were checked by the Ministry of Justice and the complaints were found unjustified, since all the sentences had been passed in conformity with the law and current regulations.

N. Article 15

119. It has already been mentioned that the Republic of Croatia enshrines the exclusion of illegally obtained evidence in its constitutional provisions and simultaneously develops precise rules in its Criminal Procedure Act on prohibition of the use of the statements of persons obtained in an oppressive, deceitful or similar way (see *supra*, para. 16). Moreover, this Act stipulates that the records of such statements must be extracted from the file of the case before the beginning of the main trial. However, if despite these safeguards, the criminal court's judgements are based on an illegally obtained statement, such a judgement must be vacated in the course of the appellate procedure on the ground of substantive violation of the criminal procedure provisions, and the case remanded for reconsideration.

120. According to the official statistics of the Ministry of Justice, approximately 20 per cent of all communal courts' criminal judgements are vacated annually; 34 per cent of these are vacated on the grounds of substantive procedural errors (for district courts the figures are 15 per cent and 13 per cent respectively). However, there are no data on cases where a judgement has been vacated because of the breach of the exclusionary rule; an empirical study at the University of Zagreb School of Law in 1994 for the district court in Zagreb (the largest in the Republic of Croatia) showed a figure of 2 per cent.

O. Article 16

121. The Police Act defines precisely the powers of the police officers in compliance with the Constitution of the Republic of Croatia and based on the principles established in the modern Western European legal systems, with emphasis on the respect for the personality, dignity, privacy and physical integrity of nationals and other universal human values.

122. Official duties are performed in accordance with legally defined powers and regulations adopted on the basis of law as well as orders and instructions received from the responsible superior officers. Below are some examples:

(a) While collecting the information about criminal acts, the authorized officers can request information from a person in custody or a prison only if permitted by the investigating judge or the head of the institution where the person is being held;

(b) In order to protect the freedoms and rights of other people and protect law and order, the authorized officers can detain a person threatening such freedoms and rights, but detention cannot exceed 24 hours (custody). If a detainee is a foreign national, his embassy must be notified without delay;

(c) While performing their duties, police officers are authorized to use force (physical force, truncheons, water jets, firearms, etc.) if unable to act in a normal way. The extent and type of such measures of compulsion must be proportional to a situation and prior to resorting to such measures the police officer has to warn the person concerned. If the methods of compulsion have been used within permissible limits, the police officer is not liable. Otherwise, he may be liable to disciplinary measures or a criminal suit.

123. The use of firearms as the most drastic means of compulsion is elaborated in detail in articles 42 and 43 of the Police Act. Firearms can be used in extreme and strictly defined cases only if other means cannot ensure successful completion of a task. In such cases the police officers have to take care of the lives of other people. Before using firearms, a police officer has to warn the person against whom he intends to use them or, if possible, try and intimidate the person by shooting in the air. The same provisions apply to the military police.